

**REMARKS / ARGUMENTS**

Claims 22, 25, 37, 39, 44-45, 47, 52-53 and 55-58 remain pending in this application. No claims have been canceled or added.

**Double Patenting Rejection**

Claims 22, 25, 37, 39, 44, 45, 47, 52, 53, 55-58 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being over claims of co-pending Application Nos. 10/786,416, 10/777,159, 10/987,162 and 11/098,639. Without admitting to the propriety of this rejection, a terminal disclaimer is hereby submitted to avoid the rejection.

**35 U.S.C. §112**

The preamble of claims 22 and 47 have been amended to recite "an article of footwear". It should be clear that the limitations following the words "comprising" corresponds to elements of the article of footwear. Applicant does not believe that it is necessary to specify exactly which portion of the article of footwear the claimed limitation are directed. The Examiner is encouraged to give this preamble its broadest reasonable interpretation, particularly since the specific claimed limitations are not disclosed or suggested by any of the cited references, whether taken individually or in combination.

**35 U.S.C. §103**

Claims 22, 25, 37, 39, 44, 45, 47, 52, 53 and 55-58 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Colvin et al (U.S. Patent No. 5,637,389) in view of Ogden (U.S. Patent No. 5,727,336) and further in view of Harada et al (U.S. Patent No. 4,894,932 ). These rejections are traversed as follows.

Applicant will once again try to clarify why the cited references fail to disclose this claimed combination. Independent claims 22 and 47 are specifically directed to a combination including a first layer of foam having reversible enhanced thermal properties and a non-woven material that absorbs and transfers moisture vapor from the layer of foam.

Colvin et al disclose a foam material having phase change materials. Colvin et al also disclose that the foam material may be used in a shoe insole. At column 2, lines 66-67, it is stated that fabric layers are attached to one or both sides of the foam, depending on the particular application involved. Therefore, at best, Colvin et al disclose a foam material having phase change molecules and having fabric layers attached to one or both sides. Colvin et al are silent about moisture transfer and are only concerned with insulation. There is no explanation of the purpose of fabric layers provided on one or both sides of the foam layer. Therefore, Colvin et al clearly fail to disclose or suggest the presently claimed invention of having a foam

material with reversible enhanced thermal properties and a non-woven material which absorbs and transfers moisture from the foam material.

On page 5, lines 1-2 of the Office Action, the Examiner states that Colvin et al fails to expressly suggest the make up of the fabric that is used. The Examiner is reminded that the make up and function of the "fabric" that is used is an important feature of the present invention as the non-woven is used to absorb and transfer moisture away from the foam material.

The Examiner relies upon Ogden for curing the deficiencies in Colvin et al. Ogden mainly focuses on controlling the motion of a foot and sock by providing an apertured top layer that is a non-absorbent, thermally non-conductive thermoplastic material. A non-woven layer is provided adjacent to the apertured top layer to provide underlying dimensional stability (see column 4, lines 16-17). Another purpose of the non-woven material is to remove moisture from the area of the apertured top layer so that the foot and sock in contact with the apertured top layer remain substantially dry (see column 4, lines 30-33). The non-woven layer can be affixed to a cushioning layer. Therefore, the non-woven layer is provided to absorb moisture from the thermoplastic, apertured top layer and is not provided to absorb and transfer moisture from the foam material (or cushioning material). Therefore, it is submitted that these references cannot be combined as asserted and, if they could be combined, such combination would fail to disclose or suggest the presently claimed invention. The attempted combination simply fails to disclose or suggest a

foam and non-woven combination in which the foam has reversible enhanced thermal properties and a non-woven which absorbs and transfers moisture from the foam material.

The Examiner is requested to reconsider the given reasoning in support of the asserted combination. The Examiner argues that one would be motivated to employ the non-woven layer of Ogden and the composite of Colvin et al "for the simple reason of using what is readily available, commonly used and inexpensive". Applicant cannot understand the rationale behind that statement. Furthermore, the Examiner states that one would have used the non-woven of Ogden in the composite of Colvin et al motivated by the fact of reducing friction between the sock and the footwear. However, Ogden et al discloses the use of a nonabsorbent, thermally non-conductive thermoplastic material to control the motion of the foot and sock within the interior of a article of footwear. Therefore, this argument for motivation incorrectly refers to the non-woven instead of the apertured thermoplastic top layer.

Claim 39 does not specifically recite reversible enhanced thermal properties, but does recite a non-woven material that transfers moisture vapor and absorbs moisture vapor from the first layer of foam and transfer it therethrough. Ogden is silent with respect to a non-woven which absorbs moisture vapor and transfers it therethrough. Ogden only describes an absorbent non-woven, without disclosing transferring moisture therethrough. As such, it is submitted that all of the pending claims patentably define the present invention over the cited art.

Appl. No. 09/500,535  
Amendment dated March 7, 2006  
Reply to Office Action of October 7, 2005

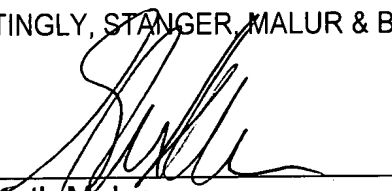
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**Conclusion**

In view of the foregoing, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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